DOCUMENT RESUME

ED 275 010 CS 505 364

AUTHOR Fadely, Dean
TITLE Recent Developments in the Theory and Practice of Policy Debate: An Evaluation.
PUB DATE Oct 86
NOTE 25p.; Paper presented at the Annual Meeting of the Carolinas Speech Communication Association (Charleston, SC, October 3-4, 1986).
PUB TYPE Viewpoints (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Debate; Higher Education; Intercollegiate Cooperation; *Judges; *Perspective Taking; *Persuasive Discourse; *Policy Formation; Psychological Patterns; Speech Communication
IDENTIFIERS *Fiat Power; *Mirror State Counterplans (Debate)

ABSTRACT

Shifting theoretical perspectives of intercollegiate policy debate, especially the changing affirmative case constructs, warrant reformulations of various strategies open to the negative case such as those developed by W. Ulrich, R. Dempsey, and D. Hartmann. Options open to the affirmative have increased, e.g., the comparative advantages case, the utilities case, and the cost benefits analysis case have developed from the stock issues case. In addition, affirmative teams have utilized goal cases, criteria cases, and alternative justification cases, providing them with various strategies for convincing judges. Analysis of the articles by Ulrich, Dempsey, and Hartmann reconsidering the alternative persuasion tactics open to the negative trigger four major arguments: (1) Mirror state counterplans can fulfill the general requirements which negative counterproposals must meet; (2) they can also fulfill the particular requisites in this specific type of policy option; (3) the recent criticisms of the mirror state counterplan by Dempsey and Hartmann rest on interrelated misconceptions concerning the nature of fiat power; and (4) the indictments of fiat power leveled by Ulrich are flawed. (JD)

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Recent Developments in the Theory and Practice of Policy Debate: An Evaluation

Dean Fadely

Dean Fadely, Ph.D., The University of Pittsburg, is an Associate Professor in the Division of Communication Studies at The University of North Carolina at Greensboro.

Accepted for presentation at the 1986 meeting of:
The Carolinas Speech Communication Association
Charleston, South Carolina, U.S.A
October 3-4, 1986

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Several years ago a colleague of mine and I argued that:

> The theoretical perspectives of intercollegiate debate constantly shift. One of the most notable fluctuations of the past decade concerns changing affirmative case constructs. Developing from the stock issues case, has been the comparative advantages case, the utilities case, and the cost benefits analysis case. In addition to these approaches, affirmative teams utilize goals cases, criteria cases, and alternative justification cases, thereby providing them with various strategies and tactics for use in convincing judges. In light of the increasing options open to the affirmative a necessity arises to reconsider the various strategies open to the negative.[1]

Walter Ulrich, Richard H. Dempsey and David J. Hartmann have undertaken such reconsiderations in recently published articles.[2] The purpose of this essay is to evaluate these articles and the theoretical reformulation developed therein. Specifically, I will advance four major areas of argumentation: (1) Mirror state counterplans can fulfill the general requirements which negative counterproposals must meet. (2) Mirror state counterplans can fulfill the particular requisites in this specific type of policy option. (3) The recent criticisms of the mirror state counterplan by Dempsey and Hartmann rest on interrelated misconceptions concerning the nature of fiat power. And (4) the indictments of fiat power levelled by Ulrich are flawed.

Mirror state counterplans are not new. They were in use when I debated in high school -- a time frame, which contrary to the rumors started by some of my students, did not interface with the Lincoln-Douglas debates, but which did precede the Kennedy-Nixon debates. The basic notion underlying mirror state counterplans can be expressed in the single statement: let the states do it. The fundamental idea is that each state can enact a miniature version of an affirmative plan -- the latter to be adopted on the federal level. For example, the 1981-1982 national debate proposition was Resolved: That the Federal Government should significantly curtail the powers of labor unions in the United States. A mirror state

counterplan would call for the states to significantly curtail the powers of labor unions within their borders. With this definition in mind, let us turn to the first argument to be considered: mirror states counterplans can fulfill the general requirements which negative counterproposals must meet.

Traditionally, debate theory has held that regardless of the specific resolution under consideration, a negative counterplan must meet certain requirements if it is to be prima facie. In other words, there are resolutionally invariant requisites for a negative counterproposal. While the exact terminology for these requirements varies according to the individual theorist under consideration, usually they are enunciated as being: (1) non-topicality, (2) mutual exclusivity, and (3) superiority.[3]

The first two characteristics, non-topicality and mutual exclusivity, are logical consequences of the major mandate under which all negative teams operate: the duty of the negative is to deny the resolution. Since the first duty of the negative is to deny the resolution, the counterproposal must be non-topical. Obviously, if the counterplan is topical the negative is supporting, not denying, the resolution. Similarly, the counterplan must be mutually exclusive from the policy option advocated by the affirmative team. The judge(s) must have to choose between, or even among, the competing policies. If the judge(s) could vote for all of the policies advocated in a given debate, including the counterplan, in a rational manner,[4] then the negative team would have failed to meet their primary obligation of denying the resolution; additionally, the affirmative team would have achieved their primary obligation of upholding the resolution.

While the third characteristic of a counterproposal, superiority, is not, in my opinion, as essential, or as universally agreed upon,[5] as the

first two, it is, nevertheless, important. As has been argued:

> Some theorists argue that the counterplan must be superior to the affirmative proposal.6 The rationale for this position hinges on the notion that, if the affirmative plan is as good as the counterplan, then the resolution has not been defeated and the negative should lose. Although it seems hypothetical that a debate involving two explicit policy systems could end in a virtual tie, if that did occur, the presumption should rest with whichever proposal involves less risk. Thus, the negative counterplan should be superior in some way, albeit less risk, to the affirmative proposal.7

The question now arises: can a mirror state counterplan meet these three basic requirements? To help commence an answer to this query let us focus on the issue of non-topicality and hypothesize that two teams are debating the proposition Resolved: That the Federal Government should abolish laws regulating the manufacture, sale, distribution, and possesion of obscene and/or pornographic material(s). The affirmative argues that such action should be taken and, logically enough, proposes a constitutional amendment which expands the scope of the first amendment so that heretofore obscene and/or pornographic material(s) become protected as free speech. Such an amendment would have the effect of overturning Supreme Court decisions such as Miller and Paris Adult Theatre I as well as rendering unconstitutional laws such as Comstock. In response, the negative team can argue that the abolition should be effected, not by the affirmative plan, but by actions of the states. As the affirmative team has operationally defined the resolution in terms of a constitutional amendment, and, as the agent of action is The Federal Government, the negative counterplan constitutes a clear denial of the resolution.[8]

Thus, the negative counterplan is non-topical. Austin J. Freeley furnishes support for this topicality analysis in writing:

> The negative may establish that its counterplan is nonpropositional (or nontopical) in a number of ways. It may argue that the counterplan should be carried out by a different level of government than that called for in the resolution (e.g., the states

rather than the federal government should do it.)9

Negative teams can achieve mutual exclusivity for their policy option in several ways. They may use the funding needed to implement the affirmative proposal for their plan. They may usurp the affirmative team's funding mechanisms. They may be able to exploit a time lag by which it is impossible to implement the affirmative proposal as quickly as the negative counterplan. Thus, when the judge(s) vote at the end of the round, the negative plan is implemented first and, arguendo, the need for the affirmative policy is obviated. Depending on the particulars of the resolution being debated, and the provisions of the mirror state counterplan, all three of the options, as well as others, are available.

As has been previously indicated, negative debaters often try to achieve counterplan superiority by proving that the negative counterproposal entails less risk than the affirmative policy option. Freeley cites the following example:

> ...on the "consumer product safety" proposition, negatives using a "states" counterplan argued that the states rather than the federal government should regulate a particular consumer product -- if a plan turned out to be undesirable, less harm would be done on a statewide basis than if the plan were nationwide. If the plan turned out to be desirable, then other states would adopt it.10

It would appear then that, taken at face value, a mirror state counterplan can fulfill the three basic requirements which all negative counterplans must meet. The question now arises: can a mirror state counterplan fulfill any specialized requirements inherent in this specific type of counteproposal?

The major particularized requirement for a mirror state counterplan would appear to be that the action(s) of the states must be arguably able to achieve the results of the affirmative proposal. This is a requirement which is resolutionally variant. Sometimes, the national proposition obviously lends itself to a mirror state counterplan approach; the previously referenced examples of the 1976-1977 consumer product safety topic and the 1981-1982 labor union topic are cases in point. Sometimes, the wording of the national resolution precludes, or at least militates against, the use of a mirror state counterplan. I cannot envision, for example, a mirror state counterplan on either the 1974-1975 proposition, Resolved: That the power of the Presidency should be significantly curtailed, or the 1977-1978 resolution That law enforcement agencies should be given significantly greater freedom in the investigation and/or prosecution of felony crimes.[11] However, the fact that a mirror state counterplan is resolutionally variant in no way denies its theoretical validity. This observation concerns a practical limitation not a theoretical one.

Now that the mirror state counterplan has been examined with regard to its ability to fulfill the general requirements which all negative counterproposals must meet, as well as the particular requirements of this type of counterplan, we are ready to consider the third major argument of the essay: the recent criticisms of the mirror state counterplan by Dempsey and Hartmann rest on an interrelated misconception concerning the nature of fiat power.

In the game-like world of competitive tournament debating, fiat power is simply another of the rules of the game. In the real world, it would be all but impossible for two college students, let alone two high school students, to implement the policies which an affirmative team calls for in

its plan. Since in actuality, the plan could not be implemented, it could not be thoroughly analyzed and evaluated. Therefore, the process and merits of competitive tournament debate would be thwarted. Thus, the idea of fiat power has been promulgated as a solution to this problem.

Fiat power is just a way of saying "hypothetically" or "for the sake of argument let us assume this affirmative plan to be implemented." Under these stipulations, the negative team can more easily debate another area of clash--the results of the plan. While fiat power is a way of saying "let's pretend," there are limits to the pretense. These are common sense limitations designed to improve the quality of competitive debating. For example, the affirmative team cannot fiat the physically impossible, i.e., the affirmative cannot fiat, a magic wand to cure the ills of the world. This limitation, which has been referred to as "the scope of the could,"[12] holds that what an affirmative advocates and fiats must be within the realm of physical possibility. It could happen. As has been previously indicated, this does not mean that it would happen. This does not mean that it is even likely to happen, only that it is theoretically possible for the advocated proposal to be implemented. Obviously, it avails us little to debate magic wands and mystical cures and neither side can fiat these. Similarly, neither side fiat away problems associated with the policy options which they espouse--problems such as the lack of solvency or the presence of disadvantages.

Gerald H. Sanders gives a straightforward explication of fiat power when he writes:

> Another right of the affirmative that is important is the power of fiat. This means that the affirmative can mandate the implementation of their proposal. Remember that all debate resolutions contain the word "should" in them. If the negative were to be able to argue legitimately that the affirmative plan will never be adopted by congress, for instance, the entire debate could revolve

around this issue and you would never consider the substance of the issues involved. In fact, the negative could be admitting attitudinal inherency if they argued in this manner. However, in order to preclude this possibility, the affirmative can fiat their proposal into existence. In other words, they only have to argue that the proposal "should" be adopted, not that it "would" be adopted. This is why a negative argument like the one mentioned above is called a "should-would" argument and is not legitimate in academic debate.13 Let me hasten to add that the affirmative is limited to fiating their program into existence. They cannot fiat solvency. Also, the negative can argue some of the reasoning behind congress' attitude against the affirmative proposal. There may be the source of some good disadvantages here. However, an argument that simply states that congress will not adopt the proposal is overcome by the affirmative fiat power.14

Theodore F. Sheckels, Jr. supplies a similar analysis of fiat power without restricting it to any one side when he states:

> The word "should" appears often in policy resolutions. I have not treated it as a key term in need of definition because its definition in debating is fairly standardized. "Should" means "ought to but not necessarily will." This standardized definition implies two important conventions of debate: (1) that the team advocating the resolution does not have to show it will be adopted; (2) that the team advocating the resolution does not have to show that a Constitutional amendment will be passed by Congress and ratified by the requisite number of states if an amendment is necessary for the presented or implied policy to take effect. Both of these conventions are subsumed under the term "fiat power." The team advocating a policy is permitted to command or "fiat" the presented or implied policy into operation, bypassing, as it were, the necessary legislative actions. This convention has long been observed in debating so that attention will be directed toward the merits of the resolution, not the political dimensions any presented or implied policy possesses. Beginnning debaters need to know about this convention so that they do not waste time discussing whether Congress will or will not pass a policy.15

Fryar and Thomas give a succinct summary of the concept in defining fiat as:

> An assumed power to put a proposal into effect; a legal mandate binding on the parties involved, overriding their personal attitudes. Debaters are allowed to say their proposals are to be implemented "by fiat" for the sake of avoiding quibbles over whether, in the real world, such proposals could be expected to receive approval. Fiat power is limited to matters subject to law; it is not a "magic wand" to avoid substantive argument. For example, an energy bill could be adopted by fiat, but a new oil supply cannot be discovered by fiat.16

Dempsey and Hartmann misanalyze the nature of fiat power, their

misanalysis includes: (1) the confusion of should with would, and some attendant strawperson argumentation arising from this confusion, and (2) the misanalysis of authoritative testimony regarding the nature of fiat.

Dempsey and Hartmann confuse should with would. For example, in discussing the mirror state counterplan they assert, "all fifty states simply won't adopt such laws on their own."[17] They then conclude that, since the states won't adopt such laws, a negative debate team cannot legitimately propose such a counterplan.[18] Maybe all fifty states would adopt uniform laws on their own if the reasons for doing so were rationally compelling. This is an idea which I will address subsequently. However, whether the states would or would not so act is not the major issue which needs to be considered. In terms of competitive tournament debate, the issue is whether they should, not whether they would. Dempsey and Hartmann commit a should-would argument. They ignore a central aspect of fiat power. In the words of Sheckels, previously noted, "The team advocating a policy is permitted to command or 'fiat' the presented or implied policy into operation, bypassing, as it were, the necessary legislative actions."[19] The negative can bypass the necessary legislative actions in their counterplan as can the affirmative in their plan. To argue that the legislative actions would not happen, and therefore that the negative counterplan would not eventuate, clearly lies outside the limits of contest debating.

Furthermore, the idea of uniform laws which Dempsey and Hartmann advance is a strawperson argument. All fifty states have adopted laws against actions such as arson, murder, and rape. While it is true that these laws vary from state to state, it is relatively important. The laws vary because each state legislature acting rationally (we hope) passed

variants of the law which, in their opinion, were best suited for the particular problems and social values of the individual state in question. If the problems and societal values of each state were as uniform as the problems and societal values argued in a first affirmative constructive, the probability of uniform state laws would be increased. Also, if there were overriding reasons for uniform state laws, if uniform state laws should be passed, if such laws were indeed logically desirable, then the probability of the passage of uniform laws, by state legislatures, would be greater.

The important issue to be considered is not whether the laws are uniform, but whether the laws are solvent. Laws vary from state to state neither because of a plot to reduce the effectiveness of jurisprudence nor because of accident. Laws vary from state to state because, in the opinion of state lawmakers, a specific version of a law is more appropriate for that particular state. In the opinion of state lawmakers, the individuality of state laws increases their solvency. Thus, Dempsey and Hartmann assume, without proof, that non-uniform, but similar, state laws could not be used in a mirror state counterplan. They assume that such laws would not be solvent because they are not identical.

Dempsey and Hartmann further assume that states would not pass uniform laws even if it were in their interest to do so. However, they do cite evidence to the effect that states have profited from non-uniform laws and that therefore, it is in the rational self-interest of states to enact such laws.[20] If the rationale for any particular course of action was as great as the typical first affirmative constructive, i.e., mounds of dead bodies, or mounds of injured, wounded, maimed and bleeding bodies, or economic loss, or even the potential for any or all of the above, then that course of action would, hopefully, be adopted by rational lawmakers, albeit

rational lawmakers representing fifty states. Dempsey and Hartmann, in short, ignore what some theorists have referred to as "the inherent and compelling need."[21]

In addition to confusing should with would and engaging in strawperson argumentation, Dempsey and Hartmann make several other statements which indicate some confusion either as to the nature of fiat or as to their research methodologies. For example, they cite Austin J. Freeley extensively on the nature of fiat power:

> Freeley (1981) like others, limits fiat power by noting that it cannot extend to 'unreasonable' provisions and that the plans are subject to the normal political processes associated with the agent of action (p. 167).[22]

Dempsey and Hartmann then assert that "negatives typically implement mirror counterplans"[23] in ways that are unreasonable and not "subject to the normal political processes."[24]

A comparison of the actual statement in Freeley's text with the paraphrase cited by Dempsey and Hartmann leads me to believe that Freeley's meaning of unreasonable and normal political processes is different from the meaning inferred by Dempsey and Hartmann. The following is the complete quotation from Freeley. The underlined part represents the statements cited by Dempsey and Hartmann.

> Affirmatives may fiat reasonable provisions for their plan. For instance, they may stipulate that their administrative body be bipartisan or nonpartisan; they may stipulate geographic representation; they may provide that members of the body be lawyers, physicians, or accountants or meet various professional standards. Indeed, they may stipulate anything for which there is a reasonable warrant or relevant analogy.
>
> Affirmatives may <u>not</u>, however, fiat <u>unreasonable provisons</u> for their plan. For instance, in a debate on consumer protection, the affirmatives may not fiat that their administrative body will be headed by Ralph Nader; in a debate on crime control, they may not fiat that the members of their administrative body will be incorruptible; if they designate a Congressional committee to investigate the CIA, they may not fiat that all of the members will be left-wing Democrats.

> In short, the affirmative plan is subject to normal political processes and its members are subject to normal human frailties. The affirmative may not appoint "Jesus Christ Superstar" to its administrative body and stipulate that miracles will be passed to overcome attitudinal inherency and any other problems that block the status quo from functioning in a state of perfection.25

My interpretation of this passage is that the term normal political processes, essentially means the possible. Unreasonable provisions are provisions which, by Freeley's example, are impossible to guarantee other than by the use of fiat power which would constitute a petitio principii. Certainly, nothing in Freeley's text condemns mirror state counterplans; rather, as has been indicated, Freeley specifically holds that the negative may argue them.[26] This latter fact also seems to indicate that Dempsey and Hartmann misanalyze or misapply Professor Freeley's treatment of fiat power and the counterplan. They then use this misanalysis to argue against a legitimate form of negative argumentation--the mirror state counterplan.

Whereas Dempsey and Hartmann's indictments of the mirror-state counterplan rest on interrelated misconceptions concerning the nature of fiat power, Walter Ulrich proposes to modify fiat power in a way which would limit the ability of a negative team to employ mirror-state counterplans. Ulrich is proposing a specific change in accepted academic debate theory and practice--a proposal with which the reader may not be familiar. Therefore, in order to analyze and evaluate his position accurately and fairly, it will be necessary to quote extensively from his article.

Professor Ulrich states:

> The aim of this paper is to alter the orientation of debate so that it reflects more accurately real world argument. In the real world, the agent is important, and one must recognize the limitations that one's position places on the choices available. The current use of the fiat in debate does not recognize this factor. Only by shifting the framework of the judge can a more realistic view of the nature of argument be guaranteed.27

Specifically, Ulrich proposes:

> ...that the judge should adopt the role of the agent specified in the resolution. The debaters should argue as they would if they were arguing before the agent in the resolution. Thus, if the resolution calls for Congressional action, the policy maker should be viewed as Congress. If the topic calls for international action, the policy maker should be one controlling an international organization...the judge would thus role play the agent in the resolution. The judge is then asked to decide how (s)he would vote if (s)he were in the place of the agent, and had only the information in the round on which to base a decision. The only thing the ballot signifies is that the judge, based on the arguments in the round, thinks that the agent should or should not adopt the resolution. All arguments are addressed to the judge as if the judge were the actual agent in the resolution.28

He additionally argues:

> A few debate topics do not specify the level of government that should act. In these cases, the affirmative should be able to specify the level of government that is the audience. It should be noted that, while the selection of an audience will restrict the options open to a judge, in choosing which policy is superior, the judge should adopt a utilitarian perspective, judging the policies based on their impact on all humans, not just the immediate audience.29

Ulrich predicts the effect of his proposal as having:

> ...several implications. It decreases the impact of any minor repairs or counterplans by any agent besides the one specified in the resolution. While negatives can still argue for minor repairs and counterplans at the state level, they must show they will be adopted.30

Ulrich offers a four-fold justification for his proposed modification of fiat power. His criticisms of fiat power, as currently practiced, are:

> First, there is no real world counterpart to the all-powerful policy maker with universal fiat power. The orientation to a problem (or the agent) is of critical importance in deciding what policy should be adopted. The universal fiat allows this factor to be ignored, and thus causes debaters to ignore this critical concept in argumentation. This can only harm the decision-making process. Never do any real world decision makers have control over more than one level of government, except indirectly. Thus, an activity that is designed to train individuals in decision making does so by excluding one of the critical variables in policy making: the limitations imposed on policy makers by nature of the agent choosing policy.31

Ulrich continues his first indictment by indicating that:

> This discussion has been directed toward the policy maker perspective.

Similar problems are created even for the critic who views him/herself as a citizen testing a hypothesis. First, the citizen has no power to enact anything, and even if the citizen is allowed to speculate about policy (s)he has no power over the second indictment of fiat power is true. [sic] There are no legitimate limits to fiat power (or potential policies (or potential policies or hypotheses to consider). Second, if the citizen is viewed as a voter, the problem is even worse. There is rarely a chance for a voter to vote on something as specific as a policy resolution, at least at the federal level; in voting for a candidate the issues are never as clear as in a debate (federal vs. state enactment of a specific policy); the candidates usually differ on more than one plan. The only exercise of choice is a vote; a voter can never vote directly on which of two levels should act. In addition, the voter can only vote in one state level election, and thus must pass legislation affecting other states through the federal government.32

Ulrich asserts that:

The second weakness of this use of fiat power is that, taken to its logical conclusion, it would destroy debate. For the fiat to be legitimate construct, there must be limits on what actions can be fiated into existence. To allow unlimited fiat would allow for gross abuse of the concept. For example, given the ability to fiat action by government, why not extend the ability to fiat individual actions or changes in the laws of nature. These extensions of fiat power make debate worthless. The crime problem can easily be solved by fiating that all criminals become nice people. The pollution problem can be solved by fiating that the laws of nature be changed so that SOx becomes a healthy emission. Poverty can be eliminated by fiating that rich industries give their money to the poor people.

I am sure that it will be argued that these examples are extreme, and that no judge would allow these minor repairs. Even that argument accepts the premise that there must be some restrictions placed on fiat power; it is not unlimited. The question becomes, how should the fiat power be limited? Normally, the fiat power is arbitrarily limited to governmental organizations, but this limitation is arbitrary - it could just as logically be extended to industry, or limited to one level of government. As clear implication of this, the limitation of debate to the consideration of actions by one agent is at least as reasonable as current uses of fiat being limited to all governmental agencies. If anything, the limitation of the fiat to the federal government is a more reasonable limitation, since clearly the policy maker must be able to act as the Federal government (or else the resolution could not be passed); any other actions are made possible only through the bias of the judge, not by anything that can be inferred by the resolution.

The weakness of this view of fiat power is even greater. To give a judge the power of fiat requires that a judge be able to change both laws of nature and individual behavior. Thus, to argue that the three examples cited earlier are unreasonable is to concede that the use of the fiat is unreasonable. Consider what a fiat entails. In order for a proposal to be fiated into existence, at a minimum, the law has to suddenly appear in the legal records, without human help, which is

> quite a change in the laws of nature. Even that is not enough. Since people may see the law, but ignore it since they were not involved in the passing of the law, the judge must be able to change the minds of all Americans into believing that this law is legitimate. This is quite a task, since it involves changing not only the belief of all Americans about the existence of a law, but also the entire metaphysical nature of the ways that laws come into existence, for they are expected to obey a law that was not there a day before, and which was adopted by waving of a magic wand, or the signing of a ballot. Surely, if the judge can convince all Americans that a new law exists, convincing a few criminals to go straight would be a feat hardly worth bragging about. To allow the use of fiat, as it is currently used, then, is to give the judge more power than would be required to solve the problem directly by changing the minds of individuals in society (and indeed, requires that the judge has this power). Thus, placing the judge in the place of a policy maker with unlimited fiat power is unreasonable.33

According to Ulrich, the third problem with fiat power, as currently practiced in academic competitive debate, is:

> ...it produces poor debates. This has been evident in recent years. There has been a tendency for negative teams to run counterplans at the state level that, in reality, are nothing more than the affirmative team's plan with minor modifications, adopted at the state level. While this may be desirable if the debate emphasized the distinction between federal and state programs, many debates merely emphasize the advantages of the minor difference in the policies. There is no inherent reason why the federal government could not adopt the minor change. The result is that the debate turns into a discussion of minor plan differences, rather than the merits of the resolution. Little would be lost if state level counterplans were excluded from debate.34

Lastly, Ulrich states:

> A final argument against allowing the negative to stress multiple levels of agents is that there are time constraints on debate. Although this is not a view I am sympathetic to, many people use it against other debate practices, and it clearly applies to this tactic. There is a finite time allowed in a debate round. To debate both which agent should act, as well as what action should be taken often will result in neither issue being debated adequately.35

I have tried to depict Professor Ulrich's position as accurately and completely as is possible within obvious space constraints. I now propose to examine this position, although <u>not</u> in the order of his indictments. I shall consider I., the second part of II., III., II., and IV.

Ulrich's first criticism of fiat power ("...there is no real world

counterpart"[36]) rests on the assumption that there should be a real world counterpart for the educational exercise of competitive, tournament, academic. policy debate. I neither share nor agree with his assumption. As indicated, tournament style debating is a game-like exercise. While it is a game which engenders great benefits for the participants,[37] it, like other educational exercises, does not necessarily conform, or have to conform, to the real world. Furthermore, Professor Ulrich's solu tion does not necessarily offer any substantive increase in real world isomorphism. Instead of role playing an agent with the power to fiat programs at all levels of government, Ulrich calls on the debate judge to role play an agent with the power to fiat programs at one level of government.[38] For example, on the 1981-1982 NDT resolution, previously cited, the agent of action would role play the Federal Government. Thus, on the proposition, Resolved: that all United States public school systems should implement a program of daily compulsory Christian education, Ulrich's agent of action (the judge in an academic debate) would have to role play an authority with the power to implement this proposal throughout all fifty states, with varying legislative, judicial, and executive branches, the District of Columbia, as well as arguably Puerto Rico and dependent's schools throughout the world. Delete the word public from the resolution and the agent's role and fiat power is dramatically increased. Lest this example appear far-fetched, the reader need only recall the 1985-1986 NDT resolution: That more rigorous academic standards should be established for all public elementary and/or secondary schools is the United States in one or more of the following areas: language arts, mathematics, natural sciences. Similar problems would exist on a proposition such as the one debated in 1977-1978, Resolved, that law enforcement agencies in the United States should have significantly greater freedom in the investigation

and/or prosecution of felony crimes.

Even with a resolution specifically limited to the Federal Government, the agent of action would have to role play the entire federal bureaucracy -- executive, legislative, and judicial branches, with all the concomitant extras which an inventative negative team could cogitate. Consider the extent of fiat power necessary for Ulrich's modification. In his own words previously cited to describe current fiat power:

> In order for a proposal to be fiated into existence, at a minimum, the law has to suddenly appear in the legal records, without human help, which is quite a change in the laws of nature. Even that is not enough. Since people may see the law, but ignore it since they were not involved in the passing of the law, the judge must be able to change the minds of all Americans into believeing that this law is legitimate. This is quite a task, since it involves changing not only the belief of all Americans about the existence of a law, but also the entire metaphysical nature of the ways that laws come into existence, for they are expected to obey a law tht was not there a day before, and which was adopted by waving of a magic wand, or the signing of a ballot. Surely, if the judge can convince all Americans that a new law exists, convincing a few criminals to go straight would be a feat hardly worth bragging about.39

If there is little difference in the amount of real world similarity necessarily accruing between current fiat practices and Ulrich's proposal, there is a difference in the scope of negative argumentation: The affirmative can fiat their plan. However, the negative team's ability to fiat a counter-proposal at the state level would be severely constrained. Thus, while the affirmative is permitted to bypass the legislative actions necessary to implement a policy option, the negative is not. Ulrich asserts that this lack of fairness is good. In discussing his third problem area, he asserts that the ability of a negative team to fiat a mirror state counterplan "...produces poor debates."[40] I can just as easily assert that it produces good debates. Certainly, on its face, the ability of a negative team to fiat a counterproposal to the same extent that an affirmative team can fiat a proposal produces fair debates.

Ulrich's second reason for the modification of fiat theory is his prediction that the practice, if continued in its present form, "...would destroy debate."[41] The use of fiat power in academic, tournament debate has been an accepted practice since the "olden days" -- even before I debated in high school. If, as Ulrich predicts, the use of fiat power will destroy debate, I submit that it would have done so by now. As has been indicated, it is the absence of fiat power which is counterproductive, especially for novice debaters, as it allows, indeed encourages, them to focus on less important issues.[42]

Ulrich is correct when he argues that "to allow unlimited fiat would allow for gross abuse of the concept."[43] However, as has been indicated, fiat power is not unlimited. On the contrary, it is limited to the realm of what is theoretically and physically possible -- what proposals could be implemented.

Fourth and finally, Ulrich argues that existing fiat practices are not in keeping with "...time constraints on debate."[44] Ulrich notes "...this is not a view I am sympathetic to."[45] I agree for three reasons: First, it is often important to debate..."both which agent should, as well as which action should be taken."[46] Second, since we cannot always predict in advance when those times will be, it is always important to be able to debate both agent and action. Third, if debaters misanalyze the situation and debate "...neither issue [agent or action] adequately,"[47] the use of the ballot to penalize the erring teams would seem to be a more parsimonious solution to the problem than an alteration of the rules of the game.

The theoretical perspectives of tournament style debate are still shifting, and the various strategies and tactics for use in convincing

judges still need continued assessment. Such an evaluation has been the purpose of this paper.

[1] M. Gordon Widenhouse and Dean Fadely, "Negative Constructs: A Perspective," Debate Issues IX (January, 1978), pp. 9-13.

[2] Walter Ulrich, "The Agent in Argument Toward a Theory of Fiat," Debate Issues, XVIII (December, 1984), pp. 11-13. Richard H. Dempsey and David J. Hartman "Mirror State Counterplans: Illegitimate, Topical, or Magical," The Journal of the American Forensic Association XXI (Winter, 1985), pp. 161-166. Other articles which have undertaken this reconsideration while treating issues relevant to this discussion include: Robert Branham, "The Counterplan as Disadvantage," Speaker and Gavel XVI (Summer, 1979), pp. 61-66; and Michel E. Mayer and Jerold Hall, "Evaluating the Studies Counterplan: Topicality and Competitiveness," Speaker and Gavel XVI (Summer, 1979), pp. 67-72.

[3] Widenhouse and Fadely; Allan J. Lichtman and Daniel M. Rohrer, "A General Theory of the Counterplan," in Advanced Debate Readings in Theory, Practice, and Teaching, ed. David A. Thomas (Skokie: National Textbook Company, 1979), pp. 200-212; Austin J. Freeley, Argumentation and Debate Reasoned Decision Making (Belmont: Wadsworth Publishing Company, 1981), pp. 211-216; Maridell Fryar and David A. Thomas, Basic Debate (Lincolnwood: National Textbook Company, 1983), pp. 88-90; and Theodore F. Sheckels, Jr., Debating Applied Rhetorical Theory (New York: Longman Inc., 1984), pp. 157-161, 207-210. For a slightly different interpretation, see: Sanders who, although he admits "some variance with other writers in this area," takes a similar position. Gerald H. Sanders, Introduction to Contemporary Academic Debate (Prospects Heights: Waveland Press, 1983), pp. 107-115.

[4] The important phrase to remember is, in a rational manner; if the negative counterplan alone is better than either the affirmative plan alone or the negative counterplan plus the affirmative plan, then it would not be

a rational decision to vote for either the affirmative plan alone or the affirmative plan plus the negative counterproposal.

[5] For example, see: J. W. Patterson and David Zarefsky, Contemporary Debate (Boston: (Houghton Mifflin Company, 1983), p. 218. Also, see: The fourth edition of Freeley, p. 219.

[6] In addition to the sources cited in footnotes 3 and 4, see: Glenn R. Capp and Thelma Robuck Capp, Principles of Argumentation and Debate (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1965), pp. 50-52. Wayne C. Eubank, "Developing the Case," in Argumentation and Debate: Principles and Practices, ed. James H. McBath (New York: Holt, Rinehart and Winston, Inc., 1963), pp. 113-116; Glen E. Mills, Reason in Controversy 2nd ed. (Boston: Allyn and Bacon, Inc., 1968), p. 108; and Wayne N. Thompson, Modern Argumentation and Debate: Principles and Practices (New York: Harper and Row, Publishers, 1971), pp. 88-92.

[7] Widenhouse and Fadely, p. 12.

[8] I would argue that even if the resolution did not specify an agent of action, the negative team, depending on the particulars of the debate, could propose a sound mirror state counterplan.

[9] Freeley, pp. 211-212.

[10] Freeley, p. 212.

[11] I am not always in agreement with Arthur Schopenhauer's rather cynical observation that "every man takes the limits of his own field of vision for the limits of the world." Just because I cannot envision a mirror state counterplan on these propositions does not mean that the evermore creative and imaginative mind of an intercollegiate debater could not generate one. However, for the sake of discussion, I am willing to stipulate that some national resolutions preclude the use of mirror state counterplans and cite two instances which I consider to be examples of such

preclusion.

[12] David A. Ling and Robert V. Seltzer, "The Role of Attitudinal Inherency in Contemporary Debate," The Journal of the American Forensic Association VII (Spring, 1971), pp. 278-283. See especially: p. 280.

[13] In discussing a should-would argument, H. Francis Short states, "...when the affirmative argues that its proposition should be accepted, it does not have to defend the would argument. Its plan assumes the nature of a fiat. "From: H. Francis Short, "Affirmative Case Building," in Introduction to Debate, ed. Carolyn Keefe, Thomas B. Harte, and Laurence E. Norton (New York: Macmillian Publishing Company, Inc., 1982), p. 175. Austin J. Freeley is even more explicit in his discussion of the illegitimacy of should-would when he writes, "The negative team must avoid the pointless, in educational debate, 'should-would' argument. The point is not would - but should - the affirmative proposal be adopted"(Emphasis Freeley's), Freeley, pp. 47-48.

[14] Sanders, p. 56.

[15] Sheckels, p. 14 (emphasis Sheckels').

[16] Fryar and Thomas, p. 198.

[17] Dempsey and Hartmann, p. 162.

[18] Dempsey and Hartmann.

[19] Sheckels, p. 14.

[20] Dempsey and Hartmann, p. 162.

[21] For example, see: Robert P. Newman, "The Inherent and Compelling Need," The Journal of the American Forensic Association II (May, 1965), pp. 66-71.

[22] Dempsey and Hartmann, p. 161. The inclusion of the words "associated with the agent of action" are apparently Dempsey and Hartmann's

as they do not appear on page 167, or on page 168 for that matter, of Freeley's text.

[23] Dempsey and Hartmann, p. 161. Also, see: p. 163.

[24] Dempsey and Hartmann, pp. 161-164.

[25] Freeley, pp. 167-168.

[26] Freeley is not alone in explicitly stating the legitimacy of mirror state counterplans. Sanders also indicates that the use of a mirror state counterplan is a legitimate line of negative refutation; although, he suggests that it, along with the conditional counterplan, the hypothetical counterplan, and the studies counterplan, constitutes "poor strategy in academic debate." Sanders, pp. 111-112.

[27] Ulrich, p. 13.

[28] Ulrich, p. 12.

[29] Ulrich, p. 13.

[30] Ulrich, p. 12.

[31] Ulrich, p. 12.

[32] Ulrich, p. 13.

[33] Ulrich, p. 12.

[34] Ulrich, p. 12.

[35] Ulrich, p. 12.

[36] Ulrich, p. 12.

[37] It is beyond the scope of this paper to consider these benefits; however, the interested reader might want to see: Blair Lybberd, "The Debate Over Debate: Another Perspective," Debate Issues XVIII (December, 1984), pp. 5-10; Kent Colbert and Thompson Biggers, "Why Should We Support Debate?", The Journal of the American Forensic Association XXI (Spring, 1984), pp. 237-240.

[38] Ulrich, pp. 12-13.

[39] Ulrich, p. 12.

[40] Ulrich, p. 12.

[41] Ulrich, p. 12.

[42] As coaches we have all experienced beginning negative debaters arguing "constitutionality" and similar issues which focus, not on the merits of a resolution, but rather, on how, or if, the proposition would be implemented.

[43] Ulrich, p. 12.

[44] Ulrich, p. 12.

[45] Ulrich, p. 12.

[46] Ulrich, p. 12.

[47] Ulrich, p. 12.